Supreme Court, U.S.
FILED

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No. 01-

IN THE

Supreme Court of the United States

JAMES E. THOMPSON,

Petitioner,

v.

ALUMINUM COMPANY OF AMERICA,
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
and UNITED STEELWORKERS LOCAL 303,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether or not the decision of the United States Court of Appeals for the Fourth Circuit conflicts with prior decisions of the Fourth Circuit?

Whether or not the decision of the United States Court of Appeals for the Fourth Circuit conflicts with a decision of another United States Court of Appeals and sanctions a departure from the accepted and usual course of judicial proceedings by the lower court so as to call for an exercise of the supervisory power of the United States Supreme Court?

PARTIES TO THE PROCEEDING

The Petitioner is an employee at the Badin, North Carolina, facility of Aluminum Company of America, Inc. (Alcoa), and is a member of United Steelworkers Local 303.

The Respondents are Petitioner's employer, Alcoa, and his union, United Steelworkers Local 303 and the United Steelworkers of America, AFL-CIO-CLC.

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The Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (App. A) is a published opinion. The opinion of the United States District Court for the Middle District of North Carolina (App. B) is published.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on January 22, 2002 (App. A). The United States Court of Appeals entered an order denying a timely petition for rehearing and petition for rehearing en banc on February 20, 2002 (App. C).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

§ 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

STATEMENT OF THE CASE

Petitioner James E. Thompson (Thompson) filed an action in the Superior Court of Stanley County, North Carolina, pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, alleging that his employer, Alcoa, breached the Union Agreement at his workplace and

that his Union breached its duty of fair representation to him. The Respondents removed this action to the United States District Court for the Middle District of North Carolina. The Respondents answered the Complaint, and following discovery, moved for an order granting summary judgment. On March 30, 2001, the United States District Court for the Middle District of North Carolina granted Respondents' Motions for Summary Judgment pursuant to Fed. R. Civ. P. 56(c). Petitioner appealed the United States District Court's order granting summary judgment in favor of the Respondents to the United States Court of Appeals for the Fourth Circuit.

The United States Court of Appeals for the Fourth Circuit affirmed the judgment of the United States District Court on January 22, 2002. Thereafter, the Court of Appeals entered an Order denying Petitioner's timely petition for rehearing and petition for rehearing en banc on February 20, 2002.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH PRIOR DECISIONS OF THE FOURTH CIRCUIT.

The decision of the United States Court of Appeals for the Fourth Circuit conflicts with prior decisions of the Fourth Circuit. This conflict alone provides a compelling reason to grant this petition.

The United States Court of Appeals for the Fourth Circuit previously has held that a collective bargaining agreement

calls into being the common law of the particular industry *or of the particular plant. Tobacco Workers Int. Union Local 317 v. P. Lorillard Corp.*, 314 F. Supp. 513, 520 (M.D.N.C. 1970), *affirmed in part, reversed in part on other grounds*, 448 F.2d 949 (4th Cir. 1971). The decision of the United States Court of Appeals in the instant case conflicts with its prior decision in *Tobacco Workers Int. Union Local 317 v. P. Lorillard Corp.*, 314 F. Supp. 513, 520 (M.D.N.C. 1970), *affirmed in part, reversed in part on other grounds*, 448 F.2d 949 (4th Cir. 1971).

A. Section 80 - Union Contract

The Master Agreement addressed health matters including work-related medical conditions (Persons Dep., Exhibit 1, Section 80, p. 110.; Jt. App. 402). Section 80 provided, in pertinent part,

> 1. When, because of a disability attributable in whole *or in part* to his employment with the Company, it is medically indicated that an employee be removed from his job, the following shall apply:
>
> > a. The removed employee shall be entitled to exercise all rights under the Agreement as though he had been affected by a reduction in forces. Such rights include, but are not limited to, the right to transfer to an available job in his own plant or to one in another plant if no job is available in his own plant.

> 2. A removed employee demoted or transferred pursuant to paragraph 1. a. to a lower job grade shall nevertheless be paid at the job grade not less than the job from which he was removed. (Persons Dep., p. 70, Exhibit 1; Jt. App. 311, 346) (emphasis added). Section 80 had not presented any problems under the Union Contract prior to 1996 and Eddie Thompson (Frick Dep., p. 33, l.1-25; Jt. App. 1081).

Section 80(1)(a) of the Union Contract applies where an employee is unable to perform his job "because of a disability attributable in whole *or in part to his employment* with the Company" (Jt. App. 165) (Emphasis added). The medical evidence indicated that Eddie Thompson's medical condition was, at the very least, attributable *in part* to his duties in the potroom at Badin Works. Dr. Landis thought that the potroom was aggravating the Petitioner's asthma. *The past practice and custom at Badin Works was to treat such medical conditions as covered under Section 80.* Unfortunately, Eddie Thompson's case was treated differently.

B. Past Practice

Past practice under Section 80 had been to allow Badin employees to bump less senior employees where work was available, transfer to another Alcoa plant if hiring, or to receive supplemental unemployment benefits (Frick Dep., p. 33, l. 1-10; Jt. App. 1081). *Past practice and custom at Badin Works under Section 80(1)(a) of the Agreement demonstrated that there was a genuine issue of material fact as to whether or not the Union breached its duty of fair representation and whether or not Alcoa breached the Agreement.*

In interpreting a collective bargaining agreement, it is often necessary to go outside the four corners of the Agreement itself to determine the rights of the parties. Collective bargaining agreements are not ordinary contracts. A collective bargaining agreement calls into being the common law of the particular industry or of the particular plant. *Tobacco Workers Int. Union Local 317 v. P. Lorillard Corp.*, 314 F. Supp. 513, 520 (M.D.N.C. 1970), *affirmed in part, reversed in part on other grounds*, 448 F.2d 949 (4th Cir. 1971).

C. Dissimilar Treatment

Past practice under Section 80 had been to allow Badin employees to bump less senior employees where work was available, transfer to another Alcoa plant if hiring, or to receive supplemental unemployment benefits (Frick Dep., p. 33, l. 1-10; Jt. App. 1081).

Deposition testimony indicated that several Badin employees, Sam Blalock, Dianne Burris, Houston Pratt, Danny Gallegos, Randy Shell, and Sam Miller were laid off or disqualified under Section 80 and all allowed to bump into other positions at Badin or transfer to another Alcoa plant, or to receive supplemental unemployment benefits while on layoff (Frick Dep., p. 56, l. 5-10; Jt. App. 1104; Thompson Dep., p. 46, l. 9-15; Jt. App. 514; Pratt Dep., p. 84, l. 20-25; Jt. App. 868; Medlin Dep., p. 41, l. 24-25; p. 42, l. 1; p. 67, l. 1-16; Jt App. 735, 736, 761). At that time, Alcoa ordinarily looked for ways to place an employee in another job rather than placing them on sick card (Medlin Dep., p. 39, l. 14-18; Jt. App. 733).

When Houston Pratt, *the Union Steward for the potroom*, had a heart attack, instead of working in the potroom, he was placed on layoff and received supplemental unemployment benefits. When Dianne Burris had a non-work related medical condition, instead of going into the potroom, she was allowed to transfer to Point Comfort, Texas. At the time of his disqualification, Petitioner was unaware of the circumstances surrounding Alcoa's transfer of Dianne Burris to its Point Comfort, Texas facility. Later, at step meetings for Grievance BA-1969, Petitioner inquired about Burris' transfer of Rob Person, Badin Human Resource Manager, who refused to discuss her transfer. The medical cases of Houston Pratt and Dianne Burris under Section 80 had occurred prior to the handling of Eddie Thompson's case.

Despite questioning by Houston Pratt, Lowell Frick, and Helen Deese (Medlin), Dan Rendine insisted that Eddie Thompson was "different" from other prior cases under Section 80. Helen Deese (Medlin) testified that she asked Dan Rendine for clarification of Mr. Thompson's status (Medlin Dep., p. 54, l. 1-3; Jt. App. 748). Helen Deese (Medlin) cited the examples of Dianne Burris, Sam Blalock, and Houston Pratt to Dan Rendine who said those cases "were different" (Medlin Dep., p. 61, l. 7-10; Jt. App. 755). Houston Pratt testified that he disagreed with Alcoa's definitions of "disqualification" under the Master Agreement (Pratt Dep., p. 58, l. 1-3; Jt. App. 842). Helen Deese (Medlin) examined the Union Contract for ten (10) minutes and, other than Section 80, could find no definition of a "medical" disqualification (Medlin Dep., p. 21, l. 5-8; p. 20, l. 24-25; Jt. App. 715, 714).

Eddie Thompson was treated differently than Houston Pratt and Dianne Burris. He was told that his medical

condition was *not* work-related (which he disputed) but then his situation was treated differently than other non-work-related medical situations. *Eddie Thompson was treated differently than his Union Steward and other Union members under similar circumstances.*

II.

THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CONFLICTS WITH A DECISION OF ANOTHER U.S. COURT OF APPEALS AND SANCTIONS A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY A LOWER COURT.

The decision of the United States Court of Appeals for the Fourth Circuit conflicts with a decision of another United States Court of Appeals and sanctions a departure from the accepted and usual course of judicial proceedings by a lower court.

A United States District Court may amend the pleadings to conform to the evidence in a § 301 case merely by entering findings on the unpleaded issues. No formal amendment of the pleadings is necessary. *Galindo v. Stoody Co.*, 793 F.2d 1502, 1513 (9th Cir. 1986). The United States District Court erred in failing to do so in this case. Thus, the decision of the United States Court of Appeals in the instant case conflicts with the decision of the United States Court of Appeals for the Ninth Circuit in *Galindo v. Stoody Co.*, 793 F.2d 1502, 1513 (9th Cir. 1986). This conflict alone provides a compelling reason to grant this petition. Further, and for the same reason, the decision of the United States Court of Appeals in this case sanctions a departure by a lower court

from the accepted and usual course of judicial proceedings as decided by *Galindo v. Stoody Co.*, 793 F.2d 1502, 1513 (9th Cir. 1986).

A. Grievance BA-1844

Appellant's disqualification and transfer request in January of 1996 occurred *within the context* of Grievance BA-1844. *Evidence concerning the Unions' handling of this grievance was the subject of, and adduced in, discovery in this case and argued in Plaintiff's Brief in the United States District Court.* A United States District Court may amend the pleadings to conform to the evidence in a § 301 case merely by entering findings on the unpleaded issues. No formal amendment of the pleadings is necessary. *Galindo v. Stoody Co.*, 793 F.2d 1502, 1513 (9th Cir. 1986). The United States District Court overlooked this evidence.

As a result of the Grievance BA-1844 step meetings, Eddie Thompson was sent to see a Company doctor, Dr. Landis in Charlotte (Pratt Dep., p. 75, l. 5-9; Jt. App. 859). Dr. Landis did *not* disqualify Eddie Thompson from his pot servicer position (Thompson Dep., p. 39, l. 2; Jt. App. 507). However, Dan Rendine, seizing the opportunity to put Eddie Thompson out of the plant, disqualified Mr. Thompson from his pot servicer position (Pratt Dep., p. 76, l. 10-15; Jt. App. 860; Thompson Dep., p. 43, l. 8-12; Jt. App. 511). Rendine took the position that Alcoa had no other available positions for Eddie Thompson and Alcoa was going to lay him [Thompson] off on sickness and accident benefits (Pratt Dep., p. 76, l. 10-15; Jt. App. 860). Because the disqualification of Eddie Thompson occurred within Grievance BA-1844, the Unions should have pursued that grievance to arbitration, as recommended by Houston Pratt, the Union Steward.

Houston Pratt believed that Alcoa had breached the Union Contract in disqualifying Eddie Thompson (Pratt Dep., p. 36, l. 24-25; p. 37, l. 1-3; Jt. App. 820, 821) and recommended to Marshall Owens, Local 303 president, to take grievance BA-1844 to arbitration (Pratt Dep., p. 27, l. 9-16; p. 70, l. 11-13; Jt. App. 811, 854). Marshall Owens told Pratt that he "had to look into the grievance" and would get back to him but never did (Pratt Dep., p. 95, l. 14-16; p. 71, l. 9-12; Jt. App. 879, 855).

The deposition testimony indicates that BA-1844 may still be a pending grievance. Certainly, Eddie Thompson testified that he had reviewed his personnel record and the discipline remained "a black mark on his record" (Thompson Dep., p. 87, l. 4; Jt. App. 555). Local 303 should have pressed BA-1844 to arbitration in view of the fact that Eddie Thompson's disqualification occurred as a result of, and in the context of, BA-1844. As Houston Pratt testified, "I talked them into-instead of any further discipline, like they normally do, to send him to a specialist to keep from ---" (Pratt Dep., p. 69, l. 8-11; Jt. App. 853). *The lower courts' review should have included Grievance 1844.*

B. Thompson Misled by Union

The Union Defendants, citing Thompson's "ill-considered" decision to pursue a workers comp claim, attempted on appeal to blame Eddie Thompson for their gross negligence in January of 1996. However, Mr. Thompson had a clear recollection that, immediately after the January 29, 1996, meeting, he asked Houston Pratt, his Union Steward, about the need to file a grievance (Thompson Dep., p. 68, l. 21-25; Jt. App. 536). Pratt responded "No, the workers comp will settle one way or the other" (Thompson Dep.,

p. 179, l. 12-15; Jt. App. 646). It is interesting to note that Houston Pratt took notes of the January 29, 1996 meeting but that Pratt has been "unable to locate" his notes (Pratt Dep., p. 35, l. 3-7; p. 37, l. 12-15; p. 81, l. 2-5; Jt. App. 819, 821, 865). Eddie Thompson was misled by his Union Steward, Houston Pratt, when he asked Pratt about grieving the transfer denial.

C. Grievance BA-1855

Once Alcoa disqualified Eddie Thompson and put him out of the plant on sick card, Mr. Thompson was supposed to receive sickness and accident benefits. However, he did not receive any sickness and accident benefits for over nine (9) months (Thompson Dep., p. 101, l. 5-6; Jt. App. 569). Eddie Thompson was without work, without his regular pay, without his supplemental unemployment (SUB) benefits, and without S&A benefits. He telephoned Houston Pratt, Lowell Frick, Marshall Owens, Joe Weber, and anyone else with the Union that he could contact. He spoke with Helen Deese (Medlin) and Pam Ford, the Alcoa benefits administrator. He telephoned Barbara Richey with Aetna Insurance, the S&A carrier. She told him that Alcoa told her not to pay him. Finally, *as a result of his telephone calls*, Eddie Thompson began receiving S&A benefits in November, 1996. The only explanation that he ever received concerning the hold-up of his S&A benefits was that Dan Rendine had instructed that S&A benefits be withheld from Eddie Thompson.

In his affidavit, Marshall Owens attempts to take credit for "pressuring" Alcoa management into paying these benefits. While it is true that Marshall Owens filed Grievance BA-1885 over the S&A benefits, benefits were not paid to Eddie Thompson until 5 ½ months later. It is instructive to

note that Marshall Owens indicated that the "date of incident" of BA-1855 was the same date, May 16, 1996, as he filed Grievance BA-1885. This practice was common among Local 303 officials as Lowell Frick did the same thing on Grievance BA-1969. This practice reflects the gross deficiencies at Local 303 and indicates that time limitations were *not* adhered to by the parties.

D. ***Grievance 1978 vs. Grievance 1969***

The Union Defendants argued on appeal that the fact that Eddie Thompson received a wage-enhancement under Section 80 supports their reasoning that the transfer grievance under Section 80 should not have been pursued to arbitration. *However, this reasoning is illogical and irrational.*

Badin management conceded that Section 80 applied. As Rob Persons, Human Resource Manager at Alcoa, candidly admitted, "I believe that, as a result of the mediation, we accepted responsibility for Mr. Thompson's condition and, in my mind, that changed the status of whether the rate retention language applied" (Jt. App. 294). Local plant officials paid Eddie Thompson the retention rate under Section 80 *because of* the workers comp settlement. However, corporate officials at Alcoa then refused to pay Mr. Thompson back pay or transfer him under Section 80 *because of* the workers comp settlement. On the one hand, Alcoa, in Grievance BA-1978, conceded that Section 80 did apply and, on the other hand, in Grievance BA-1969, Alcoa argued that Section 80 did not apply.

The ultimate position of the Company with respect to Grievance BA-1969, when juxtaposed with the Company's resolution of Grievance BA-1978, was inconsistent,

unreasonable, and irrational. The acceptance of this inconsistent position by the Union Defendants was unreasonable and irrational.

Lowell Frick testified that he believed that Eddie Thompson was "done wrong" (Frick Dep., p. 110, l. 7-11; Jt. App. 1158) and that, given Alcoa's position on Section 80, Eddie Thompson was "doomed if he does; he's doomed if he don't." (Frick Dep., p. 105, l. 2-7; Jt. App. 1153). *Eddie Thompson was put in a "Catch-22" situation.*

Petitioner contends that the facts and reasonable inferences demonstrated that the Union Respondents were grossly deficient in their duties and they demonstrated a reckless disregard for his rights under the Union Contract. *Ash v. United Parcel Service, Inc.*, 800 F.2d 409, 411 (4th Cir. 1986); *Wyatt v. Interstate & Ocean Transport Co.*, 623 F.2d 888, 891 (4th Cir. 1980). Petitioner submits that the facts and reasonable inferences demonstrated that the actions of the Union Respondents were outside any wide range of reasonableness so as to be irrational. *Air Line Pilots Assn. Int'l v. O'Neill*, 499 U.S. 65, 67, 111 S. Ct. 1127, 1130 (1991) (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)).

The decision of the Court of Appeals in affirming the decision of the United States District Court cannot be squared with its previous decisions and with that of another United States Court of Appeals.

CONCLUSION

Petitioner submits that the United States Court of Appeals overlooked evidence which supported his claim against the Union Respondents for breach of their duty of fair representation. This case involves questions of exceptional importance concerning "hybrid 301" actions within the Fourth Circuit.

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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